

# **Exhibit 1**

**Subject:** Re: Fitzgerald v. Wildcat--hearing/stay

**Date:** Thursday, January 28, 2021 at 12:12:27 PM Eastern Standard Time

**From:** Andrew Guzzo

**To:** Mullin, Shilee, Kristi Cahoon Kelly

**CC:** 'Wingfield, Alan D.', Heiserman, Judith, 'Andrew Adams III (aadamsh@hogenadams.com)'

Shilee:

We aren't going to agree to a stay absent an agreement from your clients not to collect any amounts on the loans or impose any interest during the stay. I assume this is a non-starter, but I am happy to chat about it further if it is something you would consider.

Obviously, we can't stop you from filing, but we don't think this is a close call.

Best,  
Andrew

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**From:** "Mullin, Shilee" <smullin@spencerfane.com>

**Date:** Thursday, January 28, 2021 at 10:59 AM

**To:** Andrew Guzzo <aguzzo@kellyguzzo.com>, Kristi Cahoon Kelly <KKelly@kellyguzzo.com>

**Cc:** "'Wingfield, Alan D.'" <Alan.Wingfield@troutman.com>, "Heiserman, Judith" <JHeiserman@spencerfane.com>, "'Andrew Adams III (aadamsh@hogenadams.com)'" <aadamsh@hogenadams.com>

**Subject:** RE: Fitzgerald v. Wildcat--hearing/stay

Andrew,

Thanks for your response. We think the arbitration clause in this case is markedly different than the one in *Gibbs* and do not believe that *Bay Mills* is directly decided the *Ex parte Young* issue before the Fourth Circuit in *Hengle*. Also, the choice of law/Virginia public policy issue in *Hengle* is highly relevant to this case. Of course, I acknowledge your disagreement and do not expect that your position regarding your interpretation of the case law to change.

That being said, I would rather not expend our clients' and judicial resources briefing the motion to stay, considering that the stay would likely be fairly short (and that the Fourth Circuit's opinion would be, at a minimum, highly instructive to our Judge). Although I suspect there is no middle ground to be had here, I thought I would reach out one more time before moving forward with the motion. Please let me know if there is any further discussion on this issue that could move the meter.

Best,

**Shilee Mullin** Attorney at Law  
Spencer Fane LLP

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**From:** Andrew Guzzo <[aguzzo@kellyguzzo.com](mailto:aguzzo@kellyguzzo.com)>  
**Sent:** Tuesday, January 26, 2021 2:48 PM  
**To:** Mullin, Shilee <[smullin@spencerfane.com](mailto:smullin@spencerfane.com)>; Kristi Cahoon Kelly <[KKelly@kellyguzzo.com](mailto:KKelly@kellyguzzo.com)>  
**Cc:** 'Wingfield, Alan D.' <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Heiserman, Judith  
<[JHeiserman@spencerfane.com](mailto:JHeiserman@spencerfane.com)>; 'Andrew Adams III ([aadams@hogenadams.com](mailto:aadams@hogenadams.com))'  
<[aadams@hogenadams.com](mailto:aadams@hogenadams.com)>  
**Subject:** [EXTERNAL] Re: Fitzgerald v. Wildcat--hearing/stay

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Shilee:

We do not consent to the stay as the issues in this case have been decided in *Gibbs* and *Bay Mills* etc. While there are significant overlap between this case and Hengle, Hengle is not a case of first impression with respect to any issues raised in your clients' MTD.

Happy to chat further if you would like.

Andrew

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**From:** "Mullin, Shilee" <[smullin@spencerfane.com](mailto:smullin@spencerfane.com)>  
**Date:** Monday, January 25, 2021 at 4:59 PM  
**To:** Andrew Guzzo <[aguzzo@kellyguzzo.com](mailto:aguzzo@kellyguzzo.com)>, Kristi Cahoon Kelly <[KKelly@kellyguzzo.com](mailto:KKelly@kellyguzzo.com)>  
**Cc:** "'Wingfield, Alan D.'" <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>, "Heiserman, Judith"  
<[JHeiserman@spencerfane.com](mailto:JHeiserman@spencerfane.com)>, "'Andrew Adams III ([aadams@hogenadams.com](mailto:aadams@hogenadams.com))'"  
<[aadams@hogenadams.com](mailto:aadams@hogenadams.com)>  
**Subject:** Fitzgerald v. Wildcat--hearing/stay

Andrew and Kristi,

Our Local Rule 11(b) designation is due on Tuesday, February 2, 2021. As intimated in our Reply Brief, because there are significant issues that overlap between Hengle and this case, we believe that a stay of this case pending the 4<sup>th</sup> Circuit's ruling in Hengle is appropriate and we intend to seek such a stay. Would you advise whether your clients will consent to our request for a stay?

Best,

**Shilee Mullin** Attorney at Law  
Spencer Fane LLP

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**From:** Mullin, Shilee  
**Sent:** Tuesday, December 29, 2020 10:02 AM  
**To:** 'Andrew Guzzo' <[aguzzo@kellyguzzo.com](mailto:aguzzo@kellyguzzo.com)>; Kristi Cahoon Kelly <[KKelly@kellyguzzo.com](mailto:KKelly@kellyguzzo.com)>  
**Cc:** 'Wingfield, Alan D.' <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Heiserman, Judith  
<[JHeiserman@spencerfane.com](mailto:JHeiserman@spencerfane.com)>; Andrew Adams III ([aadams@hogenadams.com](mailto:aadams@hogenadams.com))  
<[aadams@hogenadams.com](mailto:aadams@hogenadams.com)>  
**Subject:** RE: Wildcat (Fitzgerald) - Proposed Order and Motion on Hearing Requirement

Will do. Thanks!

Best,

**Shilee Mullin** Attorney at Law  
Spencer Fane LLP

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**From:** Andrew Guzzo <[aguzzo@kellyguzzo.com](mailto:aguzzo@kellyguzzo.com)>  
**Sent:** Tuesday, December 29, 2020 9:58 AM  
**To:** Mullin, Shilee <[smullin@spencerfane.com](mailto:smullin@spencerfane.com)>; Kristi Cahoon Kelly <[KKelly@kellyguzzo.com](mailto:KKelly@kellyguzzo.com)>  
**Cc:** 'Wingfield, Alan D.' <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Heiserman, Judith  
<[JHeiserman@spencerfane.com](mailto:JHeiserman@spencerfane.com)>; Andrew Adams III ([aadams@hogenadams.com](mailto:aadams@hogenadams.com))  
<[aadams@hogenadams.com](mailto:aadams@hogenadams.com)>  
**Subject:** [EXTERNAL] Re: Wildcat (Fitzgerald) - Proposed Order and Motion on Hearing Requirement

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Shilee:

Sorry for the delayed response here. We consent to the request, but please delete paragraph 3. We think that is a bit strong given the limited progress made to date on both ends.

Thank you,  
Andrew

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**From:** "Mullin, Shilee" <[smullin@spencerfane.com](mailto:smullin@spencerfane.com)>  
**Date:** Tuesday, December 29, 2020 at 10:09 AM  
**To:** Kristi Cahoon Kelly <[KKelly@kellyguzzo.com](mailto:KKelly@kellyguzzo.com)>, Andrew Guzzo <[aguzzo@kellyguzzo.com](mailto:aguzzo@kellyguzzo.com)>  
**Cc:** "'Wingfield, Alan D.'" <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>, "Heiserman, Judith" <[JHeiserman@spencerfane.com](mailto:JHeiserman@spencerfane.com)>, "Andrew Adams III ([aadams@hogenadams.com](mailto:aadams@hogenadams.com))" <[aadams@hogenadams.com](mailto:aadams@hogenadams.com)>  
**Subject:** FW: Wildcat (Fitzgerald) - Proposed Order and Motion on Hearing Requirement

Kristi and Andrew,

Following up on the below. Please let us know if you consent, as we need to get our motion on file today.

Happy New Year.

Best,

**Shilee Mullin** Attorney at Law  
Spencer Fane LLP

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**From:** Mullin, Shilee  
**Sent:** Wednesday, December 23, 2020 12:00 PM  
**To:** 'Kristi Cahoon Kelly' <[KKelly@kellyguzzo.com](mailto:KKelly@kellyguzzo.com)>; 'Andrew Guzzo' <[aguzzo@kellyguzzo.com](mailto:aguzzo@kellyguzzo.com)>  
**Cc:** 'Wingfield, Alan D.' <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Heiserman, Judith <[JHeiserman@spencerfane.com](mailto:JHeiserman@spencerfane.com)>; Andrew Adams III ([aadams@hogenadams.com](mailto:aadams@hogenadams.com)) <[aadams@hogenadams.com](mailto:aadams@hogenadams.com)>  
**Subject:** Wildcat (Fitzgerald) - Proposed Order and Motion on Hearing Requirement

Kristi and Andrew,

Our deadline to set our motion for hearing or arrange to submit it without a hearing is 12/29/20. In light of the holidays, *inter alia*, we have not yet had an opportunity to obtain our clients position and, then, to confer with you regarding that issue. Thus, we intend to submit a motion to extend our deadline to Feb. 2, 2020. Would you consent to that request? A draft consent motion and proposed order is attached for your review.

Hope you and yours have a fabulous holiday!

Best,

**Shilee Mullin** Attorney at Law  
Spencer Fane LLP

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